

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0393
Individual Income Tax
For the Years 1993 and 1995-1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax—S-corporation distributions to nonresident shareholders

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1; IC 6-3-2-2; IC 6-8.1-5-2(a) and (e);
45 IAC 3.1-1-2; 45 IAC 3.1-1-7; 45 IAC 3.1-1-25; 45 IAC 3.1-1-66;
45 IAC 3.1-1-109.

Nonresident taxpayer protests the assessment of adjusted gross income tax on his share of taxable Indiana S-corporation income.

STATEMENT OF FACTS

Taxpayer is a nonresident shareholder of an Indiana S-corporation. Taxpayer is a Kentucky resident. He is president and 33% shareholder of the corporation. A review of the Indiana report processing system revealed that Taxpayer failed to file any Indiana income returns for 1993 and 1995 through 1999. A return was filed in 1994. The Department assessed income tax for the years in question. Taxpayer filed a protest and a hearing was held.

I. Individual Income Tax—S-corporation distributions to nonresident shareholders

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-2-1 imposes an income tax on every nonresident person who has adjusted gross income derived from sources within Indiana. IC 6-3-2-2 defines "adjusted gross income derived from sources within Indiana." It includes distributive shares from an Indiana S-corporation to shareholders; 45 IAC 3.1-1-2 specifically states that nonresidents are required to report the income. 45 IAC 3.1-1-7 states that earnings from S-corporations are not subject to nonresident reciprocity. 45 IAC 3.1-1-25 outlines the tax liability obligations of a taxpayer, stating,

"All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana...."

45 IAC 3.1-1-66 specifically addresses S-corporations and shareholders. The regulation states that S-corporation shareholders are taxed on their distributive shares of income at the individual income tax rate. 45 IAC 3.1-1-109 requires S-corporations to withhold adjusted gross income tax and county adjusted gross income tax on any nonresident shareholder's share of taxable income of the corporation, whether distributed or undistributed. The S-corporation is required to pay the withheld amounts to the Department and to furnish a copy of form WH-18, **Indiana Miscellaneous Withholding Tax Statement for Nonresidents**, to each nonresident shareholder. *Id.*

There are time limits imposed upon the Department to make assessments against a taxpayer. In general, the Department has three years to make an assessment. IC 6-8.1-5-2(a). But there is no time limit if no return has been filed. IC 6-8.1-5-2(e).

Taxpayer was required to file an Indiana adjusted gross income tax return and failed to do so. As well, he failed to pay the adjusted gross income tax due on distributions from an Indiana S-corporation.

FINDING

For the reasons stated above, Taxpayer's protest is denied.